

**Letter of Findings Number: 07-0189
Sales and Use Tax
For the Tax Period 2004 - 2005**

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ISSUES

I. Sales and Use Tax – Out-of-State Purchasers.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-5-15; IC § 6-8.1-5-1(c); Indiana *Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the imposition of sales tax on the sales on automobiles to out-of-state purchasers.

II. Sales and Use Tax – Sales Tax Paid.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4(a)(2); IC § 6-2.5-2-2(a);

The Taxpayer protests the imposition of sales tax and use tax where the sales tax had been paid.

III. Sales and Use Tax – Exemption Certificate.

Authority: IC § 6-2.5-8-8.

The Taxpayer protests the imposition of sales tax on the sales of automobiles to a purchaser with an exemption certificate.

IV. Sales and Use Tax – Purchase for Resale.

Authority: IC § 6-2.5-5-8(b).

The Taxpayer protests the imposition of sales tax on the sales of an automobile dealer.

V. Sales and Use Tax – Seller/Manufacturer Paid Sales Tax on Supplies.

Authority: IC § 6-2.5-2-1(b).

The Taxpayer protests the imposition of use tax on business cards when the seller/manufacturer paid sales tax on the card stock.

VI. Tax Administration - Ten Percent Negligence Penalty

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2\(b\)\(c\)](#).

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation operating a used car dealership. Two of the owners of the Taxpayer also own a corporation operating as a used car dealership in Illinois. After an audit, the Indiana Department of Revenue (Department) assessed additional sales tax, use tax, interest, and penalty. The Taxpayer protested the assessments of sales tax, use tax, and penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax – Out-of-State Purchasers.

DISCUSSION

The Taxpayer is located close to the Illinois border. Therefore, the Taxpayer sold many vehicles to residents of Illinois. The Department assessed sales tax on Taxpayer's sales of cars to citizens of other states after July 1, 2004. The Taxpayer protested this assessment. The Taxpayer argued that the Department improperly assessed the sales tax since the purchasers lived in other states and paid sales taxes to the states where they resided.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Exemption statutes are strictly construed against the Taxpayer. *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003).

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. Prior to July 1, 2004, IC § 6-2.5-5-15 provided a sales tax exemption for the purchase of cars in Indiana that were immediately taken out of state to be titled in that other state. On July 1, 2004, the exemption for cars immediately taken out of state for titling was repealed.

Prior to July 1, 2004, out-of-state purchasers could execute a form ST-137 to establish that they qualified for exemption because they would immediately take the automobile to another state for titling and paying the sales tax. This form included the statement that the automobile "will be taken immediately to the State of _____ to be licensed or registered for use in that state...." In other words, the automobile was purchased in Indiana and would be immediately taken to another state for titling, use, and payment of the sales tax. After the exemption was repealed, execution of this form no longer indicated that the purchase of an automobile qualified for exemption from the sales tax. The Taxpayer submitted executed ST-137s for many of the sales on which the Department assessed sales tax. The Taxpayer also submitted statements from many of the purchasers who executed the ST-137s. These statements indicated that the automobiles were delivered to other states and therefore exempt due to the constitutional prohibitions against individual states taxing interstate commerce.

The Taxpayer cannot have it both ways. Either the transactions took place in Indiana and the cars were later

delivered to the purchaser in another state or the transaction took place in interstate commerce. The Taxpayer's two sets of documentation contradict each other. The originally filed documentation indicated that the sales transactions took place in Indiana and the automobiles were delivered out of state. The Department properly imposed the sales tax on the Taxpayer's sales of automobiles after July 1, 2004.

FINDING

The Taxpayer's protest is respectfully denied.

II. Sales and Use Tax – Sales Tax Paid.

DISCUSSION

The Taxpayer protested one assessment of sales tax and one assessment of use tax where the Taxpayer contended that sales tax had already been paid on the transactions. IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-3-2(a) imposes a complementary use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes. If the sales tax is paid on a transaction, then no use tax is due on the use of the item transferred in the retail transaction. IC § 6-2.5-3-4(a)(1). The amount of the sales tax is measured by the total price of the retail transaction. IC § 6-2.5-2-2(a).

The first transaction was the sale of a used car, invoice #1450 which did not reflect the collection of sales tax by the Taxpayer. Therefore, the Department assessed sales tax on the invoice #1450. The purchaser made two payments for the car. The two payments were reflected on invoices #1445 and #1450. The Taxpayer computed the sales tax on the total price of the car and collected that entire amount with the first payment. The first payment and sales tax were reflected on invoice #1445. The customer's second payment was for the remainder of the sale price. Since the total amount of sales tax had already been paid, the Taxpayer did not collect any sales tax on the second invoice, #1450. The Department improperly imposed sales tax on the second payment for the car reflected by invoice #1450.

The Department also assessed use tax on the Taxpayer's purchase and use of office supplies reflected on page 9 of the audit as purchased on September 26, 2005. The invoice for this purchase indicates that the Taxpayer paid sales tax when it acquired the office supplies. Therefore, the Department erred in imposing use tax on the use of these office supplies.

FINDING

The Taxpayer's protests are sustained.

III. Sales and Use Tax – Exemption Certificate.

DISCUSSION

The Department assessed use tax on the Taxpayer's purchase of channel iron reflected on page 5 as reference #12415. The Taxpayer protested the assessment claiming that it had an exemption certificate for the seller.

IC § 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

Exemption certificates affect the purchase of tangible personal property. There is no provision for exemption from use tax because the seller produced a valid exemption certificate. In this case, the Taxpayer would need to itself be exempt, which is not the case. The Department properly imposed the use tax on the Taxpayer's purchase and use of the channel iron from a seller who provided an exemption certificate.

FINDING

The Taxpayer's protest is respectfully denied.

IV. Sales and Use Tax – Purchase for Resale.

DISCUSSION

The Department assessed sales tax on the sale of a car. The Taxpayer protested this assessment contending that the purchaser was a dealer who would resell the automobile. This transaction is noted on page 6, reference #1428.

IC § 6-2.5-5-8(b) exempts property purchased for resale in the ordinary course of the purchaser's business from the sales tax. The Taxpayer did not provide any documentation substantiating its claim that the purchaser was a car dealer and purchased the automobile for resale in its normal course of business.

FINDING

The Taxpayer's protest is respectfully denied.

V. Sales and Use Tax – Seller/Manufacturer Paid Sales Tax on Supplies.

DISCUSSION

The Department assessed use tax on the Taxpayer's purchase of business cards. The Taxpayer considered the purchase of the business cards exempt from sales tax because the manufacturer/seller of the business cards paid sales tax on the card stock it purchased to prepare the business cards.

The sales tax is imposed on the transfer of tangible personal property for consideration in a retail transaction. IC § 6-2.5-2-1(b). In this case, the Taxpayer purchased tangible personal property – the business cards – in a retail transaction. The Taxpayer was not itself purchasing card stock. The Taxpayer purchased business cards with business information. The card stock had been transformed. This is a transaction subject to the imposition of sales tax. Whether or not the seller improperly paid sales tax on material used to manufacture the product is not germane to the imposition of the sales tax on the retail transaction selling the product to the Taxpayer.

FINDING

The Taxpayer's protest is respectfully denied.

VI. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed use tax was due to reasonable cause rather than negligence.

FINDING

The Taxpayer's protest to the imposition of the penalty is sustained.

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